BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

SAMUEL EDWARD MOSES,	:	
	:	
Petitioner,	:	**Docket No. OSAH-DDS-ALS-**
	:	**1551512-11-Schroer**
v.	:	
	:	
DEPARTMENT OF DRIVER SERVICES,	:	**Agency Ref. No.: 057037917**
	:	
	:	
Respondent.	:	

FINAL DECISION

I. Introduction

This matter is an administrative review of Respondent's decision to suspend Petitioner's driver's license pursuant to O.C.G.A. § 40-5-67.1. The hearing in this matter was held on June 24, 2015, before the Office of State Administrative Hearings, a court of administrative law. Petitioner was represented by Keith Fitzgerald, Esq. The arresting officer, Cpl. Anthony Vadini, represented Respondent.

Prior to the hearing, Petitioner's counsel stated that he did not contest any of the facts in support of the suspension, with the exception of Respondent's ability to meet its burden of proof without calling the law enforcement officer who initiated the traffic stop that led to Petitioner's arrest. The Court ruled that the arresting officer could lawfully testify about statements made to him by the stopping officer in order to prove that he had reasonable grounds to believe that the arrest was lawful, as set forth more fully below. Accordingly, based on all the admissible evidence and the argument of the parties, Respondent's action is hereby **AFFIRMED.**

II. Findings of Fact

1. On April 29, 2015 on Riverside Drive, Cpl. Vadini of the Bibb County Sheriff's Department's HEAT Unit came upon a traffic stop involving Petitioner. Sgt. Britt was the law enforcement officer who had initiated the traffic stop of Petitioner's vehicle. When Cpl. Vadini arrived on the scene, Sgt. Britt advised Cpl. Vadini that he had stopped Petitioner's vehicle because Petitioner had failed to maintain his lane of travel. Sgt. Britt further advised that he smelled an odor of an alcoholic beverage while speaking to Petitioner. (Testimony of arresting officer)

2. Cpl. Vadini spoke to Petitioner after speaking to the sergeant. While talking with him, Cpl. Vadini also smelled an odor of alcohol coming from inside the vehicle. He observed that Petitioner's eyes were glassy and watery. Petitioner admitted to having had one or two drinks before driving. He told Cpl. Vadini that he had a designated driver, but that person left. Petitioner stated that he knew he was technically over the legal limit, but that he thought he was okay to drive. Cpl. Vadini asked Petitioner to perform certain field sobriety tests, including the horizontal gaze nystagmus ("HGN") test, the walk and turn test, and the one-leg stand test. Cpl. Vadini detected signs of impairment from Petitioner's performance of these tests. (Testimony of arresting officer)

3. Relying on the Sgt. Britt's information, Petitioner's admission of drinking and other statements, and the results of the field sobriety tests, Cpl. Vadini placed Petitioner under arrest for driving under the influence of alcohol ("DUI"). (Testimony of arresting officer)

4. Cpl. Vadini properly read Petitioner the implied consent notice for drivers under the age 21 and requested a chemical test of Petitioner's breath. Petitioner refused to take the state-administered test. (Testimony of arresting officer)

III. Conclusions of Law

Based upon the above findings of fact, the Court makes the following conclusions of law:

A. The Constitutionality of the Stop is outside the Limited Scope of the ALS Hearing.

"'The purpose of the driver's license suspension hearing is to provide a quick, informal procedure to remove dangerous drivers from Georgia's roadways and thereby protect public safety . . . .'" Swain v. State, 251 Ga. App. 110, 113 (2001) (citations omitted) (scope of the hearing is confined to discrete issues); see also Miles v. Ahearn, 243 Ga. App. 741 (2000) (Georgia legislature has chosen to expressly limit the issues that may be considered at an administrative license suspension hearing); Dozier v. Pierce, 279 Ga. App. 464, 464–65 (2006). Moreover, Georgia courts have held that an administrative license suspension ("ALS") hearing is a remedial proceeding, separate from the criminal proceeding, which relates to a person's privilege to drive on Georgia highways.

> [T]he purpose of the license suspension hearing is clearly remedial. "The State of Georgia considers dangerous and negligent drivers to be a direct and immediate threat to the welfare and safety of the general public, and it is in the best interest of the citizens of Georgia immediately to remove such drivers from the highways of this state." O.C.G.A. § 40-5-57 . . . . In Georgia, a driver's license is not an absolute right but rather is a privilege that may be revoked for cause. "The right to continue the operation and to keep the license to drive is dependent upon the manner in which the licensee exercises this right. The right is not absolute, but is a privilege . . . . While it cannot be revoked without reason, it can be constitutionally revoked or suspended for any cause having to do with public safety." Nelson v. State, 87 Ga. App. 644, 648 (1953).

Nolen v. State, 218 Ga. App. 819, 822 (1995), cited by Flading v. State, 327 Ga. App. 346, 349 (2014).

The Georgia Court of Appeals has described the ALS hearing as an "abbreviated procedure," where "the State has only a limited opportunity to litigate the issues." Swain v. State, 251 Ga. App. at 114. Consequently, the Court of Appeals found that the results of an ALS hearing would not act as collateral estoppel in a criminal proceeding because to do so would frustrate the purpose of the "summary suspension hearing" by turning "'an administrative device at the disposal of the Respondent in which the Respondent can halt the otherwise automatic suspension of his driving privileges,'" into "'an integral part of the criminal trial . . . . The process would seldom, if ever, be swift.'" Id. (quoting People v. Moore, 138 Ill. 2d 162 (1990)).

Based on the above authority, this Court concludes that the constitutionality of the stop is not within the limited scope of the ALS hearing as prescribed by O.C.G.A. § 40-5-67.1. First, under Georgia law the constitutionality of a stop is a matter raised by filing a written motion to suppress in a criminal proceeding. See O.C.G.A. § 17-5-30; see also State v. Young, 234 Ga. 488 (1975) (In Georgia, the exclusionary rule is embedded in statutory law). Code Section 17-5-30, which does not apply to civil or administrative proceedings, codifies the exclusionary rule created by the courts in order to deter illegal searches and seizures under the Fourth Amendment. See Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. 357, 363 (1998); State v. Young, 234 Ga. at 491. However, "[t]here is nothing sacrosanct about the exclusionary rule; it is not embedded in the constitution and it is not a personal constitutional right: 'In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved.'" State v. Young, 234 Ga. at 491. Consequently, because the rule is not constitutionally mandated, the United States Supreme Court has held that it should be applied "only when its deterrence benefits outweigh its 'substantial social costs.'" Pa. Bd. of Prob. & Parole v. Scott, 524 U.S. at 363; see also State v.

Young, 234 Ga. at 492 (citations omitted) ("[I]n all consideration of the exclusionary rule and its impact, 'It is well to remember that when incriminating evidence is found on a suspect and that evidence is then suppressed, 'the pain of suppression is felt, not by the inanimate State or by some penitent policeman, but by the offender's next victim.'"").

The United States Supreme Court has refused to extend the exclusionary rule in many non-criminal matters.[1] "Despite its broad deterrent purpose, the exclusionary rule has never been interpreted to proscribe the use of illegally seized evidence in all proceedings or against all persons . . . [t]he need for deterrence and hence the rationale for excluding the evidence are strongest where the Government's unlawful conduct would result in imposition of a criminal sanction on the victim of the search." United States v. Calandra, 414 U.S. at 348 (emphasis added).[2] Although Georgia courts have held that the exclusionary rule applies in certain "quasi-criminal" hearings, such as civil forfeiture hearings,[3] those proceedings are distinguishable from an ALS hearing in light of the Court of Appeals' determination that "[a]n administrative suspension of a driver's license is not comparable to the civil forfeiture of a property right, which has been found to constitute punishment." Nolen v. State, 218 Ga. App. at 822–23 (ALS hearing "is not a prosecution").

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[1] See United States v. Calandra, 414 U.S. 338, 349-50 (1974) (holding that the exclusionary rule does not apply to grand jury proceedings); United States v. Janis, 428 U.S. 433, 453-54 (1976) (holding that the exclusionary rule does not apply in a civil tax proceeding); INS v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984) (refusing to extend the exclusionary rule to civil deportation proceedings); Pa. Bd. of Prob. & Parole, 524 U.S. at 369 (holding that the exclusionary rule does not apply in a parole revocation hearing).

[2] The United States Supreme Court also considered the delay caused by requiring the grand jury to conduct suppression hearings. Id. "'Any holding that would saddle a grand jury with minitrials and preliminary showings would assuredly impede its investigation and frustrate the public's interest in the fair and expeditious administration of the criminal laws.'" Id. (quoting United States v. Dionisio, 410 U.S. 1, 17 (1973)).

[3] See, e.g., Pitts v. State, 207 Ga. App. 606 (1993).

Applying these principles to this case, the Court concludes that the constitutionality of the stop is not swept into the limited scope of the ALS hearing under Code Section 40-5-67.1(g)(2)(A)(i), which provides the following:

> Whether the law enforcement officer had reasonable grounds to believe the person was driving or in actual physical control of a moving motor vehicle while under the influence of alcohol or a controlled substance and was lawfully placed under arrest for violating Code Section 40-6-391...

Rather, the Court interprets this subsection as requiring Respondent to prove that the arresting officer had probable cause to arrest the driver for DUI. See generally Swain v. State, 251 Ga. App. at 114 n.22 (citing subsection (g)(2)(A) and identifying one of the issues in the ALS hearing as "whether the arresting officer had probable cause for the arrest"). Given the remedial nature of the ALS proceeding, the compelling State interest in protecting public safety, the need for a quick and expeditious adjudication, and the minimal incremental deterrent effect of extending the exclusionary rule to the ALS setting, the Court concludes that the exclusionary rule does not apply to this case and that the validity of the stop is outside the scope of this hearing. See generally O.C.G.A. § 1-3-1(a) ("In all interpretations of statutes, the courts shall look diligently for the intention of the General Assembly, keeping in view at all times the old law, the evil, and the remedy.").

B. Even Assuming that the Stop is within the Scope of the Statute, Hearsay is Admissible to Prove the Arresting Officer's Reasonable Belief regarding the Lawfulness of the Stop.

Assuming *arguendo* that the validity of the stop is encompassed within the phrase "lawfully placed under arrest," the statute does not require Respondent to prove the lawfulness of the arrest *per se*, only that the law enforcement officer had reasonable grounds to believe that the arrest was lawful. That is, the plain language of Code Section 40-5-67.1(g)(2)(A) limits the scope of the ALS hearing to certain factors, the first of which is whether the officer had

reasonable grounds to believe two things about the person whose license was suspended as a result of a DUI arrest: that the person (1) was driving or in physical control of a moving vehicle and (2) was lawfully placed under arrest for DUI. Although the legislature could have expanded the scope of the ALS hearing to include direct proof of the lawfulness of the arrest, not just the officer's reasonable belief regarding the arrest's lawfulness, it did not do so.

For example, the legislature could have chosen to leave out the language in Code Section 40-5-67.1(g)(2)(a)(i) regarding the officer's "reasonable grounds to believe," and simply defined the scope of the hearing as whether the person was driving and whether the person was lawfully arrested for DUI. If it had done so, Respondent would be required to prove both these elements in order to administratively suspend Petitioner's license. However, the legislature did not use such language. Rather, it limited the scope of the ALS hearing to whether the officer had reasonable grounds to believe that the person was driving and was lawfully arrested. Courts are not permitted to overlook or "read out" language chosen by the legislature. See Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 120 (2008) ("'It is contrary to the generally accepted principles for construing statutes to 'read out' any part of the statute as 'mere surplusage' unless there is a clear reason for doing so.'" (quoting Porter v. Food Giant, 198 Ga. App. 736, 738 (1991))). Rather, "'the fundamental rules of statutory construction . . . require us to construe a statute according to its terms, to give words their plain and ordinary meaning, and to avoid a construction that makes some language mere surplusage.'" Couch v. Red Roof Inns, Inc., 291 Ga. 359, 362 (2012) (quoting Slakman v. Cont'l Cas. Co., 277 Ga. 189, 191 (2003)).

Thus, in order to prove that the arresting officer had reasonable grounds to believe that Petitioner was lawfully placed under arrest for DUI, Cpl. Vadini properly testified regarding the grounds upon which he formed his belief, including the statements of a fellow law enforcement

officer who initiated the traffic stop. See generally, In re D.C., 303 Ga. App. 395, 400 (2010) (citations omitted) (Hearsay evidence admissible in juvenile transfer proceedings, where the standard is whether there is "reasonable grounds to believe" that the accused committed the alleged crimes). In addition, hearsay is admissible when a court is "determining the existence of probable cause for an arrest or articulable suspicion for an investigatory stop." State v. Vaughn, 325 Ga. App. 633, 636 (2014) (citations omitted).

> Reasonable suspicion need not be based on an arresting officer's knowledge alone, but may exist based on the "collective knowledge" of the police when there is reliable communication between an officer supplying the information and the officer acting on that information. Officers are entitled to rely on information provided by their dispatcher when asked to be on the lookout for a certain vehicle or suspect. There is no requirement that the officer or officers providing the information testify at the motion to suppress.

Id. (quoting Edmond v. State, 297 Ga. App. 238, 239 (2009)); see also Jones v. U.S., 362 U.S. 257 (1960), overruled on other grounds, U.S. v. Salvucci, 448 U.S. 83 (1980).[4]

Moreover, unlike in Vaughn, where the testifying officer did not have any particularized information about the grounds used by the detaining officer to stop the defendant, Cpl. Vadini testified that Sgt. Britt observed Petitioner failing to maintain his lane of travel, which gave rise to the initial stop. Finally, this Court may rely on "the well-settled principle that public officials are believed to have performed their duties properly and not to have exceeded their authority unless clearly proven otherwise." Chapman v. State, 275 Ga. 314, 317–18 (2002) (citing Richmond Cty. Hosp. Auth. v. Richmond Cty., 255 Ga. 183 (1985)); see also Coleman v. Montgomery Cty., 228 Ga. App. 276, 277 (1997). Petitioner had ample opportunity at the

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[4] The United States Supreme Court held that an affidavit to show probable cause for the issuance of a search warrant is not insufficient "by virtue of the fact that it sets out not the affiant's observations but those of another. An affidavit is not to be deemed insufficient on that score, so long as a substantial basis for crediting the hearsay is presented." Jones, 362 U.S. at 269.

administrative hearing to either cross-examine Cpl. Vadini regarding his grounds for determining that the arrest was lawful or present evidence to rebut the presumption that the officers had performed their duties properly and in good faith. He chose not to do so.

Based on the findings of facts above, the Court concludes that Respondent proved by a preponderance of the evidence that Cpl. Vadini had reasonable grounds to believe that Petitioner was driving a moving motor vehicle while under the influence of alcohol. Further, the Court concludes that Cpl. Vadini had reasonable grounds to believe that Petitioner was lawfully detained and arrested for DUI. Finally, the Court concludes that Cpl. Vadini properly informed Petitioner of his implied consent rights and the consequences of submitting or refusing to submit to such test. Petitioner refused the test.

Accordingly, Respondent's suspension of Petitioner's driver's license or driving privileges was proper. O.C.G.A. § 40-5-67.1.

IV. Decision

IT IS HEREBY ORDERED THAT the decision of Respondent to administratively suspend Petitioner's driver's license, permit, or privilege to operate a motor vehicle or commercial motor vehicle in this state is **AFFIRMED.**

SO ORDERED this 29th day of June, 2015.

KIMBERLY W. SCHRODER
Administrative Law Judge